

**REMARKS**

Applicants thank the Examiner for the very thorough consideration given the present application.

Claims 1-3 and 5-30 are now present in this application. Claims 1 and 18 are independent. By this Amendment claim 18 has been amended. No new matter is involved.

Reconsideration of this application, as amended, is respectfully requested.

**Rejection Under 35 U.S.C. § 112, Second Paragraph**

Claims 18-21 stand rejected under 35 U.S.C. § 112, second paragraph for being indefinite in that, in claim 18, the terms “the floating body” and “the guide” lack proper antecedent basis. This rejection is respectfully traversed.

In an attempt to overcome this rejection, Applicants have amended claim 18 by changing “the floating body” to - - a floating body - - and by changing “the guide” to - - a guide - -.

Also, the term “elastic” in claims 18 and 20 is said to be a relative term which renders the claim indefinite. Applicants respectfully disagree with this characterization of the term “elastic,” which is used as an adjective to modify “member” in claims 18-21. While a given material can have a given amount of elasticity, Applicants respectfully submit that the meaning of the term “elastic” is clear and that the metes and bounds of claims 18-21 are clear to one of ordinary skill in the art. For example, the American Heritage dictionary defines the adjectival form of “elastic” as “easily resuming original shape after being stretched or expanded,” and as “flexible,” and as

“springy” and as “rebounding” and as “returning to or capable of returning to an initial form or state after deformation.” In view of these conventional definitions of “elastic,” Applicants respectfully submit that the meaning of “elastic member” in claims 18-21 is not indefinite, but is clear and definite.

Accordingly, reconsideration and withdrawal of this rejection of claims 18-21 are respectfully requested.

*Rejection Under 35 U.S.C. § 102*

Claims 1-5, 6, 8-10, 11, 13, 27, 28 and 29 stand rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent 4,821,537 to Zinkann et al. This rejection is respectfully traversed.

The Office Action indicates that Zinkann et al. discloses a float disposed in the fluid inlet 24, referencing Fig. 1 in this regard. Applicants respectfully submit that the Office Action fails to demonstrate that Zinkann et al. explicitly, or inherently, discloses a float disposed in its fluid inlet 24, as alleged.

Zinkann et al. clearly does not explicitly disclose a float disposed in its fluid inlet 24 because the only context in which a float is explicitly mentioned by Zinkann et al. is with respect to a float disposed in the drain. In that position, Zinkann et al. does not disclose a valve assembly installed at at least one tub opening to selectively cut off at least one pipe connected to the at least one opening to prevent foam produced in the drum and the tub from leaking outside

via the opening, and wherein the valve assembly comprises a valve installed in the opening to float in an untethered manner on the foam, as claimed.

In an attempt to demonstrate that Zinkann et al. inherently discloses a float in the fluid inlet 24, the Office Action postulates that the float in fluid inlet 24 “is not labeled, but is shown as being identical to element 5, which is disclosed as a float.” Applicants respectfully disagree with this conclusion for a number of reasons.

Firstly, Fig. 1 of Zinkann et al. is a schematic drawing, i.e., one which omits structural details of the elements shown therein. To show structural details of its drain float valve, Zinkann et al. provides Figs. 2-7. Applicants respectfully submit that in a schematic drawing such as Fig. 1, any number of elements can be shown as a closed circle, such as washwater pump 3, which is schematically shown in Fig. 3, which is partially highly schematic and partially structurally detailed, in the highly schematic portion, as a closed circle, the same as the element in Fig. 1 that the Office Action postulates/speculates is a float. Applicants respectfully submit that the closed circle shown between the detergent connection hose 24 and tub 1 can very possibly be a cross-section of a tub inlet hose.

Secondly, Zinkann et al. explicitly states that a longstanding goal of the washing machine industry is to keep detergent used in the wash process from going down the drain and, thereby, becoming useless for the wash process and, to this end, washing machines are provided with a float in the washtub drain to prevent detergent in the wash water from going down the drain (col. 1, lines 15-35). Zinkann et al. then describes unsuccessful prior art washtub drain floats (col. 1, lines 36-51). Zinkann et al. then describes its washtub drain float as a successful device,

i.e., one which one of ordinary skill in the art clearly understands to be successful in the sense that it keeps detergent used in the wash water from going down the drain. In other words, Zinkann et al. discloses that its float is successful by preventing detergent containing wash water from going down the drain, and the only location which Zinkann et al. discloses that this can be achieved is for Zinkann et al.'s successful float to be located in the drain. If Zinkann et al.'s float were in the detergent inlet tube 24, Zinkann et al.'s float would have no effect whatsoever in keeping the detergent-containing wash water from going down the drain. Thus, Zinkann et al. provides no teaching whatsoever of using a float valve in its detergent inlet line 24 to float in an untethered manner on the foam produced in the drum, as claimed. Moreover, if a float were placed there, it could block detergent from entering the tub depending on the water level in the tub. Thus, Zinkann et al. actually teaches away from providing a float in detergent inlet line 24.

The Office Action continues by stating that the end of pipe 24 reads on a guide. Unfortunately, because the Office Action has not established by objective factual evidence that Zinkann et al. explicitly or inherently discloses a float of a float valve, the Office Action does not make out a *prima facie* case that the end of pipe 24 is a guide formed in an opening to guide the not-established-to-exist valve.

The Office Action then speculates that the not-established-to-exist float would travel up the corrugated section during backflow, but would stop fluid from entering the top portion of pipe 24. Applicants respectfully submit that it is well settled that a rejection under 35 U.S.C. § 103 cannot properly be based on speculation but must be based on objective factual evidence of record. See, also, *In re Warner*, 379 F.2d 1011, 1017, 154 USPQ 173, 178 (CCPA 1967), cert.

denied, 389 U.S. 1057 (1968). See, also, In re GPAC Inc., 35 USPQ2d 1116 at 1123 (Fed. Cir. 1995) and Ex parte Haymond, 41 USPQ2d 1217 at 1220 (Bd. Pat. App. & Int. 1996). Moreover, as noted above, the Office Action fails to establish by objective factual evidence that Zinkann et al. explicitly or inherently discloses the claimed float valve in the location suggested by the Office Action.

With respect to claims 27-29, the Office Action fails to address the plate feature installed under the valve recited in these claims, thereby failing to make out a *prima facie* case of anticipation of this positively recited feature of claims 27-29. In this regard, reference is made to MPEP § 707.07(d), which states that when a claim is refused for any reason relating to the merits thereof it should be “rejected” and the ground of rejection fully and clearly stated.

Accordingly, reconsideration and withdrawal of this rejection of claims 1-5, 6, 8-10, 11, 13, 27, 28 and 29 are respectfully requested.

#### Rejections Under 35 U.S.C. § 103

Further, it is respectfully submitted the 35 U.S.C. § 103 rejections noted in the Office Action have also been overcome as the claims rejected therein are dependent claims.

#### Provisional Double Patenting Rejection

Claims 1, 2, 4-6, 10-17 and 27-30 stand rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-13 of copending

Application Serial No. 10/746,155. This rejection is respectfully traversed.

A complete discussion of the Examiner's rejection is set forth in the Office Action, and is not being repeated here.

While not conceding the appropriateness of the Examiner's rejection, but merely to advance prosecution of the instant application, Applicants are herewith submitting a second Terminal Disclaimer disclaiming the terminal portion of any patent granted on the present application which would extend beyond the expiration of any patent which issues from U.S. Application No. 10/746,155.

The Office Action correctly points out that the Terminal Disclaimer filed on February 28, 2007 lists an incorrect filing date of Application No. 10/746,155. This matter has been corrected in the Terminal Disclaimer filed on even date herewith.

The Office Action also states that the Terminal Disclaimer does not comply with 37 C.F.R. § 1.321(b) or (c) because the person who signed the disclaimer has not stated the extent of his or her interest, or the business entity's interest, in the Application/patent, referencing 37 C.F.R. § 1.321(b)(3). This statement of objection is respectfully traversed for a number of reasons.

Firstly, the USPTO Rule of Practice that governs prosecution by an assignee is not 37 C.F.R. § 1.371, as alleged, but is actually 37 C.F.R. § 3.73. Moreover, the USPTO Rule of Practice that governs establishment of an assignee to take action is not 37 C.F.R. § 1.321, but is actually 37 C.F.R. § 3.73.

Applicants respectfully submit that the Terminal Disclaimer previously filed on February 28, 2007, and the currently submitted Terminal Disclaimer, fully comply with the provisions of both 37 C.F.R. § 3.71 and 3.73 to the extent that they clearly state that the person who has signed the Terminal Disclaimer is authorized to act on behalf of the assignee. In this regard, 37 C.F.R. § 3.71(b) requires, with respect to patent applications, that an assignee becomes of record by filing a statement in compliance with 37 C.F.R. § 3.73(b) that is signed by a party who is authorized to act on behalf of the assignee. 37 C.F.R. § 3.73(b)(2) indicates that to establish ownership, a statement must be submitted that includes a statement that the person signing the submission is authorized to act on behalf of the assignee. Applicants respectfully submit that this was done in the terminal disclaimed filed on February 28, 2007, and is done in the terminal disclaimed filed on even date herewith.

Accordingly, reconsideration and withdrawal of this objection, and acceptance of the Terminal Disclaimer filed on even date herewith, are respectfully requested.

### Allowable Subject Matter

The Examiner states that claim 30 would be allowable if rewritten in independent form.

Applicants thank the Examiner for the indication of allowable subject matter in this application.

Applicants also note that the only rejection of claims 18-21 is under 35 U.S.C. § 112, second paragraph. Applicants respectfully submit that this rejection has been properly traversed and, because of this, claims 18-21 are allowable.

### **CONCLUSION**

All of the stated grounds of rejection have been properly traversed, accommodated, or rendered moot. Applicants therefore respectfully request that the Examiner reconsider all presently outstanding rejections and that they be withdrawn, and that all claims be allowed. It is believed that a full and complete response has been made to the outstanding Office Action, and as such, the present application is in condition for allowance.

If the Examiner believes, for any reason, that personal communication will expedite prosecution of this application, the Examiner is invited to telephone Robert J. Webster, Registration No. 46,472, at (703) 205-8000, in the Washington, D.C. area.

Prompt and favorable consideration of this Amendment is respectfully requested.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to Deposit Account No. 02-2448 for any additional fees required under 37 C.F.R. §§ 1.16 or 1.17; particularly, extension of time fees.

Date: August 24, 2007

Respectfully submitted,

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Attachment: Terminal Disclaimer